

# Internal Revenue bulletin

Bulletin No. 1997-46  
November 17, 1997

## HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

### INCOME TAX

Rev. Rul. 97-46, page 00.

Insurance companies; segregated asset accounts. A life insurance company is not prohibited from transferring assets other than cash from its general asset account to a segregated asset account for qualified pension plans. Rev. Rul. 73-67 revoked.

### EMPLOYEE PLANS

Rev. Rul. 97-45, page 00.

Covered compensation tables; 1998. The covered compensation tables for the 1998 calendar year for determining contributions to defined benefit plans and permitted disparity are set forth.

### EXEMPT ORGANIZATIONS

Announcement 97-112, page 00.

A list is provided of organizations now classified as private foundations.

### ADMINISTRATIVE

Notice 97-60, page 00.

Education incentives; credits; interest deduction; individual retirement accounts. Questions and answers are

provided about the Hope Scholarship and Lifetime Learning Credits, the deduction for student loan interest, Education Individual Retirement Accounts, and other higher education tax incentives recently enacted by the Taxpayer Relief Act of 1997.

Rev. Proc. 97-52, page 00.

Charitable contributions; business expenses. Guidance is provided on the deductibility, under sections 162 or 170 of the Code, of unreimbursed travel and other out-of-pocket expenses incurred by a member of a federal advisory committee while performing services without compensation for the federal government as a member of that committee.

Announcement 97-113, page 00.

The 1996 Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, is now available for downloading from the IRS home page.

Announcement 97-114, page 00.

New Form 8023, Election Under Section 338 for Corporations Making Qualified Stock Purchases, will replace Form 8023-A, Corporate Qualified Stock Purchases.

Finding Lists begin on page 00.



Department of the Treasury  
**Internal Revenue Service**

# Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the quality of our prod-

ucts and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency, and fairness.

## Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is "protecting the revenue." The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

# Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents of a permanent nature are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and proce-

dures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

## Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

## Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

## Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

## Part IV.—Items of General Interest.

With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

The first Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a quarterly and semiannual basis, and are published in the first Bulletin of the succeeding quarterly and semiannual period, respectively.

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# Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

## Section 72.—Annuities; Certain Proceeds of Endowment and Life Insurance Contracts

Does the 10 percent additional tax on early withdrawals from individual retirement accounts apply to early withdrawals used to pay qualified higher education expenses. See Notice 97-60, page 00.

## Section 127.—Educational Assistance Programs

What conditions apply to the extension of tax-free treatment of employer-provided educational assistance under the Taxpayer Relief Act of 1997. See Notice 97-60, page 00.

## Section 170.—Charitable, Etc., Contributions and Gifts

*26 CFR 1.170A-1: Charitable, etc., contributions and gifts; allowance of deduction.*

What are the rules for the deductibility, under § 162 or 170, of unreimbursed travel and other out-of-pocket expenses incurred by a member of a federal advisory committee while performing services without compensation for the federal government as a member of that committee. See Rev. Proc. 97-52, page 00.

## Section 221.—Interest on Education Loans

What are the rules for deducting interest on education loans under section 221, added by the Taxpayer Relief Act of 1997. See Notice 97-60, page 00.

## Section 401.—Qualified Pension, Profit-Sharing, And Stock Bonus Plans

*26 CFR 1.401(l)-1: Permitted disparity with respect to employer-provided contributions or benefits.*

**Covered compensation tables; 1998.**  
The covered compensation tables for the 1998 calendar year for determining contributions to defined benefit plans and permitted disparity are set forth.

### Rev. Rul. 97-45

This revenue ruling provides tables of covered compensation under § 401(l)-(5)(E) of the Internal Revenue Code (the “Code”) and the Income Tax Regulations, thereunder, for the 1998 plan year.

Section 401(l)(5)(E)(i) defines covered compensation with respect to an employee, as the average of the contribution and benefit bases in effect under § 230 of the Social Security Act (the “Act”) for each year in the 35-year period ending with the year in which the employee attains social security retirement age.

Section 401(l)(5)(E)(ii) of the Code states that the determination for any year preceding the year in which the employee attains social security retirement age shall be made by assuming that there is no increase in covered compensation after the determination year and before the employee attains social security retirement age.

Section 1.401(l)-1(c)(34) of the regulations defines the taxable wage base as the contribution and benefit base under § 230 of the Act.

Section 1.401(l)-1(c)(7)(i) defines covered compensation for an employee as the average (without indexing) of the taxable wage bases in effect for each calendar year during the 35-year period ending with the last day of the calendar year in which the employee attains (or will attain) social security retirement age. A 35-year period is used for all individuals regardless of the year of birth of the individual. In determining an employee’s covered compensation for a plan year, the taxable wage base for all calendar years beginning after the first day of the plan year is assumed to be the same as the taxable wage base in effect as of the beginning of the plan year. An employee’s covered compensation for a plan year beginning after the 35-year period applicable under § 1.401(l)-1(c)(7)(i) is the employee’s covered compensation for a plan year during which the 35-year period ends. An employee’s covered compensation for a plan year beginning before the 35-year period applicable under this § 1.401(l)-1(c)(7)(i) is the taxable wage base in effect as of the beginning of the plan year.

Section 1.401(l)-1(c)(7)(ii) provides that, for purposes of determining the amount of an employee’s covered compensation under section 1.401(l)-1(c)(7)(i), a plan may use tables, provided by the Commissioner, that are developed by rounding the actual amounts of covered compensation for different years of birth.

For purposes of determining covered compensation for the 1998 year the taxable wage base is \$68,400.

The following tables provide covered compensation for 1998:

1998 Covered Compensation Table

Calendar Year of Birth	Calendar Year of Social Security Retirement Age	1998 Covered Compensation
1907	1972	\$4,488
1908	1973	4,704
1909	1974	5,004
1910	1975	5,316
1911	1976	5,664
1912	1977	6,060

1998 Covered Compensation Table—Continued

Calendar Year of Birth	Calendar Year of Social Security Retirement Age	1998 Covered Compensation
1913	1978	6,480
1914	1979	7,044
1915	1980	7,692
1916	1981	8,460
1917	1982	9,300
1918	1983	10,236
1919	1984	11,232
1920	1985	12,276
1921	1986	13,368
1922	1987	14,520
1923	1988	15,708
1924	1989	16,968
1925	1990	18,312
1926	1991	19,728
1927	1992	21,192
1928	1993	22,716
1929	1994	24,312
1930	1995	25,920
1931	1996	27,576
1932	1997	29,304
1933	1998	31,128
1934	1999	32,940
1935	2000	34,752
1936	2001	36,528
1937	2002	38,292
1938	2004	41,748
1939	2005	43,488
1940	2006	45,216
1941	2007	46,908
1942	2008	48,552
1943	2009	50,136
1944	2010	51,684
1945	2011	53,208
1946	2012	54,684
1947	2013	56,136
1948	2014	57,432
1949	2015	58,644
1950	2016	59,760

1998 Covered Compensation Table—Continued

Calendar Year of Birth	Calendar Year of Social Security Retirement Age	1998 Covered Compensation
1951	2017	60,780
1952	2018	61,716
1953	2019	62,592
1954	2020	63,420
1955	2022	64,872
1956	2023	65,544
1957	2024	66,120
1958	2025	66,612
1959	2026	67,044
1960	2027	67,404
1961	2028	67,716
1962	2029	67,944
1963	2030	68,148
1964	2031	68,304
1965 or later	2032	68,400

1998 Rounded Covered Compensation Table

Year of Birth	Covered Compensation
1933	\$30,000
1934	33,000
1935 – 1936	36,000
1937	39,000
1938 – 1939	42,000
1940	45,000
1941 – 1942	48,000
1943 – 1944	51,000
1945 – 1946	54,000
1947 – 1948	57,000
1949 – 1951	60,000
1952 – 1954	63,000
1955 – 1959	66,000
1960 or later	68,400

### *Drafting Information*

The principal author of this revenue ruling is Donna Prestia of the Employee Plans Division. For further information regarding this notice, call (202) 622-6076 between 2:30 and 3:30 Eastern time (not a toll free number) Monday thru Thursday. Ms. Prestia's number is (202) 622-7377 (also not a toll free number).

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### Section 529.—Qualified State Tuition Programs

How have the rules for qualified state tuition programs been changed by the Taxpayer Relief Act of 1997. See Notice 97-60, page 00.

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### Section 530.—Education Individual Retirement Accounts

What are the rules for education individual retirement accounts, as enacted by the Taxpayer Relief Act of 1997. See Notice 97-60, page 00.

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### Section 817.—Treatment of Variable Contracts

*26 CFR 1.801-8: Contracts with reserves based on segregated asset accounts.*

A life insurance company is not prohibited from transferring assets other than cash from its general asset account to a segregated asset account for qualified pension plans. Rev. Rul. 73-67 is revoked. See Rev. Rul. 97-46, page 00.

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**Insurance companies; segregated asset accounts.** A life insurance company is not prohibited from transferring assets other than cash from its general asset account to a segregated asset account for qualified pension plans. Rev. Rul. 73-67 revoked.

### Rev. Rul. 97-46

Rev. Rul. 73-67, 1973-1 C.B. 330, held that asset transfers between a life insurance company's general asset account and its segregated asset account for qualified pension plans may be made only in cash. Rev. Rul. 73-67 is hereby revoked.

### EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 73-67 is revoked.

### DRAFTING INFORMATION

The principal author of this revenue ruling is Campbell Connell of the Office of the Assistant Chief Counsel (Financial Institutions & Products). For further information regarding this revenue ruling contact Mr. Connell on (202) 622-3970 (not a toll free call).

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## Part III. Administrative, Procedural, and Miscellaneous

### Education Tax Incentives

#### Notice 97-60

##### PURPOSE

The questions and answers contained in this notice provide guidance on the higher education tax incentives recently enacted by the Taxpayer Relief Act of 1997 (Pub. L. No. 105-34, 111 Stat. 788) (TRA '97). Specifically, TRA '97 added § 25A of the Internal Revenue Code providing the Hope Scholarship Credit and Lifetime Learning Credit, § 221 providing a deduction for student loan interest, and § 530 creating Education Individual Retirement Accounts ("Education IRAs"). TRA '97 also amended § 72(t) eliminating the early withdrawal tax on certain IRA withdrawals, § 127 providing an exclusion from income for employer-provided educational assistance, and § 529 setting the requirements for tax-exempt status for qualified state tuition programs (QSTPs).

These provisions create several new tax benefits for families who are saving for, or already paying, higher education costs or are repaying student loans. In addition, TRA '97 extends the exclusion for employer-provided educational assistance and makes the rules for qualified state tuition programs more flexible. The following discussion reviews in greater detail the requirements for each of these benefits. Whether a taxpayer may take advantage of these benefits depends on the taxpayer's individual facts and circumstances.

##### DISCUSSION

#### SECTION 1. THE HOPE SCHOLARSHIP CREDIT

Beginning January 1, 1998, taxpayers may be eligible to claim a nonrefundable Hope Scholarship Credit against their federal income taxes. The Hope Scholarship Credit may be claimed for the qualified tuition and related expenses of each student in the taxpayer's family (i.e., the taxpayer, the taxpayer's spouse, or an eligible dependent) who is enrolled at least half-time in one of the first two years of postsecondary education and who is enrolled in a program leading to a degree, certificate, or other recognized educa-

tional credential. The amount that may be claimed as a credit is generally equal to: (1) 100 percent of the first \$1,000 of the taxpayer's out-of-pocket expenses for each student's qualified tuition and related expenses, plus (2) 50 percent of the next \$1,000 of the taxpayer's out-of-pocket expenses for each student's qualified tuition and related expenses. Thus, the maximum credit a taxpayer may claim for a taxable year is \$1,500 multiplied by the number of students in the family who meet the enrollment criteria described above.

The amount a taxpayer may claim as a Hope Scholarship Credit is gradually reduced for taxpayers who have modified adjusted gross income between \$40,000 (\$80,000 for married taxpayers filing jointly) and \$50,000 (\$100,000 for married taxpayers filing jointly). Taxpayers with modified adjusted gross income over \$50,000 (\$100,000 for married taxpayers filing jointly) may not claim the Hope Scholarship Credit. Both the dollar limitation on the expenses for which the credit may be claimed and the modified adjusted gross income limitation will be indexed for inflation in 2002 and years thereafter.

The Hope Scholarship Credit may be claimed for payments of qualified tuition and related expenses made on or after January 1, 1998, for academic periods beginning on or after January 1, 1998. Therefore, the first time taxpayers will be able to claim the credit is when they file their 1998 tax returns in 1999. The Hope Scholarship Credit is not available for any amount paid in 1997.

Q1: Who may claim the Hope Scholarship Credit?

A1: An individual paying qualified tuition and related expenses at a postsecondary educational institution may claim the credit, provided the student whose expenses are being paid and the institution meet certain eligibility requirements.

Q2: May an individual claim a Hope Scholarship Credit for paying qualified tuition and related expenses for other family members?

A2: Yes. An individual may claim the credit for his/her own qualified tuition and related expenses and the qualified tuition and related ex-

penses of his/her spouse and other eligible dependents (including children) for whom the dependency exemption is claimed. Generally, a parent may claim the dependency exemption for his/her unmarried child if: (1) the parent supplies more than half the child's support for the taxable year, and (2) the child is under age 19 or is a full-time student under age 24.

Q3: What are the eligibility requirements for the student?

A3: A student is eligible for the Hope Scholarship Credit if: (1) for at least one academic period (e.g., semester, trimester, quarter) beginning during the calendar year, the student is enrolled at least half-time in a program leading to a degree, certificate, or other recognized educational credential and is enrolled in one of the first two years of postsecondary education, and (2) the student is free of any conviction for a Federal or State felony offense consisting of the possession or distribution of a controlled substance. For purposes of the Hope Scholarship Credit, a student will be considered to be enrolled at least half-time if the student is enrolled for at least half the full-time academic workload for the course of study the student is pursuing as determined under the standards of the institution where the student is enrolled. The institution's standard for a full-time workload must equal or exceed the standards established by the Department of Education under the Higher Education Act and set forth in 34 C.F.R. § 674.2(b).

Q4: What are the eligibility requirements for the institution?

A4: The college, university, vocational school, or other postsecondary educational institution where the student is enrolled must be an institution that is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) and, therefore, eligible to participate in the student aid programs administered by the Department of Education. This category includes virtually all accredited public, nonprofit, and proprietary postsec-



ondary institutions. (The same eligibility requirements for institutions apply for the Lifetime Learning Credit, described in the next section.)

Q5: The Hope Scholarship Credit may be claimed only for amounts spent on “qualified tuition and related expenses.” Which expenses are included in qualified tuition and related expenses?

A5: The term “qualified tuition and related expenses” means the tuition and fees an individual is required to pay in order to be enrolled at or attend an eligible institution. Amounts paid for any course or other education involving sports, games, or hobbies are not eligible for the credit, unless the course or other education is part of the student’s degree program. Charges and fees associated with room, board, student activities, athletics, insurance, books, equipment, transportation, and similar personal, living, or family expenses are not qualified tuition or related expenses. (The same definition of “qualified tuition and related expenses” applies for the Lifetime Learning Credit, described in the next section.)

Q6: The Hope Scholarship Credit is available only if a taxpayer’s “modified adjusted gross income” is below a specified amount. How does a taxpayer know what his/her modified adjusted gross income is?

A6: For most taxpayers, modified adjusted gross income is the same as adjusted gross income. Taxpayers compute adjusted gross income as part of completing a Federal income tax return. For those few taxpayers who earn income abroad or receive income from certain American territories or possessions, modified adjusted gross income will be greater than adjusted gross income. In those cases, the individual’s adjusted gross income will be increased by: (1) certain amounts that the individual earns abroad, (2) amounts effectively connected with the individual’s conduct of a trade or business or derived from sources in Guam, American Samoa, or the Northern Mariana Islands (if the individual is a resident

of the possession where the source of the income is located), and (3) amounts derived from sources in Puerto Rico (if the individual is a Puerto Rican resident). (The same rules apply for the Lifetime Learning Credit, described in the next section.)

Q7: May a nonresident alien claim the Hope Scholarship Credit?

A7: Generally no. There is an exception for certain nonresident aliens who are married to U.S. citizens or resident aliens. Nonresident aliens should consult a U.S. tax advisor to determine whether the exception applies to them. (The same rules apply to the Lifetime Learning Credit, described in the next section.)

Q8: Are qualified tuition and related expenses for graduate-level degree work eligible for the Hope Scholarship Credit?

A8: No. However, the Lifetime Learning Credit is available for these expenses. (See Sec. 2, Q&A5.)

Q9: May an individual claim a Hope Scholarship Credit for more than one family member?

A9: Yes. Furthermore, the credit is calculated on a per student, rather than a per family, basis. For example, if an individual whose modified adjusted gross income is \$35,000 pays over \$2,000 in qualified tuition and related expenses for himself and over \$2,000 in qualified tuition and related expenses for his dependent child, and both he and his dependent child meet the eligibility requirements, the individual may claim a Hope Scholarship Credit of \$3,000 (i.e., a credit of \$1,500 for his expenses plus a credit of \$1,500 for his child’s expenses).

Q10: May both the parent and a dependent child claim the Hope Scholarship Credit for the child’s qualified tuition and related expenses in the same year?

A10: No. Either the parent or the child, but not both, may claim the credit for the child’s expenses in a particular year. If an individual claims the child as a dependent on his/her Federal income tax return for the year, only the individual may claim the Hope Scholarship Credit for the child’s qualified tuition and related

expenses. If no one claims the child as a dependent on a Federal income tax return for the year, only the child may claim the Hope Scholarship Credit for the child’s expenses. (The same rules relating to individuals and dependents apply for the Lifetime Learning Credit, described in the next section.)

Q11: If a married taxpayer files a separate return, may the taxpayer claim a Hope Scholarship Credit on his/her income tax return?

A11: No. Married taxpayers may claim the credit only if the taxpayer and the taxpayer’s spouse file a joint return for the taxable year. (The same rules apply for the Lifetime Learning Credit, described in the next section.)

Q12: How does a parent claim a Hope Scholarship Credit for the qualified tuition and related expenses of a dependent child?

A12: The parent may claim the credit on his/her tax return even if the child files his/her own tax return. When a child is claimed as a dependent on a parent’s return, any qualified tuition or related expenses paid by the child during the year are treated as if the parent had paid them. Therefore, these expenses are included in calculating the parent’s Hope Scholarship Credit. A child may not claim a Hope Scholarship Credit on his/her tax return for a particular year if the child’s parent claims the child as a dependent in that same year. (The same rules apply for the Lifetime Learning Credit, described in the next section.)

Q13: What is the maximum Hope Scholarship Credit a taxpayer may claim for an eligible student?

A13: Until 2002 (when the dollar limitations are indexed for inflation), for each student who meets the eligibility requirements, the credit amount is 100 percent of the first \$1,000 of the taxpayer’s out-of-pocket expenses for qualified tuition and related expenses, plus 50 percent of the next \$1,000 of the taxpayer’s out-of-pocket expenses for qualified tuition and related expenses. Therefore, the maximum credit

amount for the expenses of an eligible student is \$1,500. If the taxpayer is claiming a credit for more than one person, the credit amount for each student in the taxpayer's family is added together to determine the maximum total credit the taxpayer may claim.

Q14: The amount a taxpayer may claim as a Hope Scholarship Credit is gradually reduced for taxpayers with modified adjusted gross income between \$40,000 and \$50,000 (between \$80,000 and \$100,000 for married taxpayers filing jointly). How does this reduction work?

A14: The reduction works on a sliding scale that reflects where the taxpayer's modified adjusted gross income is in the phase-out range. For example, until 2002 (when the dollar limitations on the credit and the income ranges are indexed for inflation), if an eligible student (who is not anyone's dependent for tax purposes) pays \$2,000 or more in qualified tuition and related expenses in a particular year, and the student's modified adjusted gross income for the year is \$45,000 (half way along the \$10,000 phase-out range), the credit amount for the student is limited to \$750. By contrast, if the same student's modified adjusted gross income was \$35,000, the credit amount for the student would be the maximum \$1,500.

Q15: How does a taxpayer claim the Hope Scholarship Credit?

A15: The first year that the credit will be available is 1998. Thus, taxpayers will not be able to claim the credit until they file their 1998 tax returns in 1999. Instructions accompanying the 1998 tax forms (for returns required to be filed in 1999) will explain how to calculate the credit and how to claim it on the tax return.

Q16: Is there a limit to the number of times a taxpayer may claim the Hope Scholarship Credit for each student?

A16: Yes. The credit may be claimed in no more than two years for each student. Thus, for example, a couple with a child who starts as a

freshman in the fall of 1998, continues as a sophomore in 1999, and meets the eligibility requirements may claim the credit for their child's expenses in 1998 and again in 1999. After 1999, neither the parents, the student, nor anyone else may claim any additional Hope Scholarship Credits for this student's qualified tuition and related expenses. However, in 2000 and thereafter, the Lifetime Learning Credit may be available for this child's expenses. Furthermore, if the couple has another child who starts as a freshman in the fall of 1999, the couple may claim the Hope Scholarship Credit for that child's expenses in 1999 and one additional year.

Q17: May an individual claim both the Hope Scholarship Credit and the Lifetime Learning Credit for a student's expenses in a single taxable year?

A17: No. For each year in which a student meets the eligibility requirements for the Hope Scholarship Credit, the student's expenses may be used as the basis for a Hope Scholarship Credit or a Lifetime Learning Credit, but not both. If, for example, an eligible student pays more than \$2,000 in qualified tuition and related expenses during the calendar year, the student (or the individual claiming the student as a dependent) may not claim the Hope Scholarship Credit for the first \$2,000 of expenses and the Lifetime Learning Credit for the rest.

Q18: If a couple has two children, one who is a freshman and one who is a junior, may the couple claim a Hope Scholarship Credit for the freshman's expenses and a Lifetime Learning Credit for the junior's expenses?

A18: Yes. Assuming the applicable eligibility requirements have been met for each credit, a taxpayer may claim the Hope Scholarship Credit for one student's expenses and the Lifetime Learning Credit for another student's expenses in the same year.

Q19: May a parent or student claim a Hope Scholarship Credit for tuition

paid in advance of when the academic period begins?

A19: Generally, the credit is available only for payments of qualified tuition and related expenses that cover an academic period beginning in the same calendar year as the payment is made. (An academic period begins on the first day of classes, and does not include periods of orientation, counseling, or vacation.) An exception, however, allows a parent or student to claim a Hope Scholarship Credit for payments of qualified tuition and related expenses made during the calendar year to cover an academic period that begins in January, February, or March of the following taxable year. Because the Hope Scholarship Credit does not apply to expenses paid before January 1, 1998, this exception does not apply to tuition paid in 1997 to cover academic periods beginning in 1998.

Q20: If a student (who is not claimed as a dependent on anyone's Federal income tax return) pays qualified tuition and related expenses using a combination of a Pell Grant, a loan, a gift from a family member, and some personal savings, what expenses may be taken into account in calculating the Hope Scholarship Credit the student may claim?

A20: The student may take into account only "out-of-pocket" expenses in calculating the credit. Qualified tuition and related expenses paid with the student's earnings, a loan, a gift, an inheritance, or personal savings (including savings from a qualified state tuition program) are taken into account in calculating the credit amount. However, qualified tuition and related expenses paid with a Pell Grant or other tax-free scholarship, a tax-free distribution from an Education IRA, or tax-free employer-provided educational assistance are not taken into account in calculating the credit amount. (The same rules apply for the Lifetime Learning Credit, described in the next section.)

Q21: May a student's parents claim the Hope Scholarship Credit for the student's expenses for a taxable

year in which the student takes money out of an Education IRA on a tax-free basis?

A21: No. If a student is receiving a tax-free distribution from an Education IRA in a particular taxable year, none of that student's expenses may be claimed as the basis for a Hope Scholarship Credit for that taxable year. However, the student may waive the tax-free treatment of the Education IRA distribution and elect to pay any tax that would otherwise be owed on the Education IRA distributions received in any taxable year so that the student or the student's parents may claim a Hope Scholarship Credit for expenses paid in the same year the Education IRA distributions are received.

## SECTION 2. LIFETIME LEARNING CREDIT

Beginning on July 1, 1998, taxpayers may be eligible to claim a nonrefundable Lifetime Learning Credit against their federal income taxes. The Lifetime Learning Credit may be claimed for the qualified tuition and related expenses of the students in the taxpayer's family (i.e., the taxpayer, the taxpayer's spouse, or an eligible dependent) who are enrolled in eligible educational institutions. Through 2002, the amount that may be claimed as a credit is equal to 20 percent of the taxpayer's first \$5,000 of out-of-pocket qualified tuition and related expenses for all the students in the family. After 2002, the credit amount is equal to 20 percent of the taxpayer's first \$10,000 of out-of-pocket qualified tuition and related expenses. Thus, the maximum credit a taxpayer may claim for a taxable year is \$1,000 through 2002 and \$2,000 thereafter. These amounts are not indexed for inflation.

If the taxpayer is claiming a Hope Scholarship Credit for a particular student, none of that student's expenses for that year may be applied toward the Lifetime Learning Credit. The amount a taxpayer may claim as a Lifetime Learning Credit is gradually reduced for taxpayers who have modified adjusted gross income between \$40,000 (\$80,000 for married taxpayers filing jointly) and \$50,000 (\$100,000 for married taxpayers filing jointly). Taxpayers with modified adjusted gross income

over \$50,000 (\$100,000 for married taxpayers filing jointly) may not claim a Lifetime Learning Credit. The modified adjusted gross income limitation will be indexed for inflation in 2002 and years thereafter. The definition of modified adjusted gross income is the same as it is for purposes of the Hope Scholarship Credit. (See Sec. 1, Q&A6.)

The Lifetime Learning Credit may be claimed for payments of qualified tuition and related expenses made on or after July 1, 1998, for academic periods beginning on or after July 1, 1998. Therefore, the first time taxpayers will be able to claim the credit will be when they file their 1998 tax returns in 1999. The Lifetime Learning Credit is not available for any amount paid in 1997.

Q1: Who may claim the Lifetime Learning Credit?

A1: An individual paying qualified tuition and related expenses at a post-secondary educational institution may claim the credit, provided the institution is an eligible educational institution. Unlike the Hope Scholarship Credit, students are not required to be enrolled at least half-time in one of the first two years of postsecondary education. Nonresident aliens generally are not eligible to claim the Lifetime Learning Credit. (See Sec. 1, Q&A7.)

Q2: May an individual claim a Lifetime Learning Credit for paying qualified tuition and related expenses for other family members?

A2: Yes. An individual may claim the credit for his/her own qualified tuition and related expenses and the qualified tuition and related expenses of his/her spouse and other eligible dependents (including children) for whom the dependency exemption is allowed. Generally, a parent may claim the dependency exemption for his/her unmarried child if: (1) the parent supplies more than half the child's support for the taxable year, and (2) the child is under age 19 or is a full-time student under age 24.

Q3: What are the eligibility requirements for the institution?

A3: They are the same requirements that apply for the Hope Scholarship Credit. (See Sec. 1, Q&A4.)

Q4: Is the Lifetime Learning Credit available for a student taking only one course?

A4: Yes. For example, a student who has just graduated from high school and is taking a single course at a community college may claim the Lifetime Learning Credit if the student comes within the income limits and is not claimed as a dependent by someone else.

Q5: Are qualified tuition and related expenses for graduate-level education eligible for the Lifetime Learning Credit?

A5: Yes.

Q6: May an individual claim a Lifetime Learning Credit for more than one family member?

A6: Yes. However, unlike the Hope Scholarship Credit, the Lifetime Learning Credit is calculated on a per family, rather than a per student, basis. Therefore, the maximum available credit does not vary with the number of students in the family. For example, if in 1999 a married individual whose modified adjusted gross income is \$35,000 pays \$5,000 of qualified tuition and related expenses to attend an eligible educational institution, the individual may claim a \$1,000 Lifetime Learning Credit. If in the same year the individual also pays another \$2,000 in qualified tuition and related expenses for his spouse to attend an eligible educational institution, the individual's Lifetime Learning Credit is still \$1,000.

Q7: May both the parent and a dependent child claim the Lifetime Learning Credit for the child's qualified tuition and related expenses in the same year?

A7: No. Either the parent or the child, but not both, may claim the credit for the child's expenses in a particular year. If an individual claims the child as a dependent on his/her Federal income tax return for the year, only the individual may claim the Lifetime Learning Credit for the child's qualified tuition and related expenses. If no one claims the child as a dependent on a Federal income tax return for the year, only the child may claim the Lifetime Learning Credit for the child's expenses.



- Q8: How does a parent claim a Lifetime Learning Credit for the qualified tuition and related expenses of a dependent child?
- A8: The parent may claim the credit on his/her Federal income tax return even if the child files his/her own tax return. When a child is claimed as a dependent on the parent's return, any qualified tuition and related expenses paid by the child during the year are treated as if the parent had paid them and, therefore, are included in calculating the parent's Lifetime Learning Credit. A child may not claim a Lifetime Learning Credit on his/her tax return for any year if the child's parent claims the child as a dependent in that same year. Also, a married taxpayer who does not file a joint return is not eligible to claim the Lifetime Learning Credit. (See Sec. 1, Q&A11.)
- Q9: What is the maximum Lifetime Learning Credit a taxpayer may claim?
- A9: The credit is equal to 20 percent of the taxpayer's out-of-pocket expenses for qualified tuition and related expenses of all eligible family members, up to a maximum of \$5,000 in expenses annually through 2002. Thus, the maximum Lifetime Learning Credit a taxpayer may claim through 2002 is \$1,000. After 2002, the credit is equal to 20 percent of the taxpayer's out-of-pocket expenses up to a maximum of \$10,000 in expenses. Thus, the maximum Lifetime Learning Credit a taxpayer may claim after 2002 is \$2,000. The maximum credit does not change even if the taxpayer is claiming a credit for the expenses of more than one student in the family.
- Q10: What does the term "qualified tuition and related expenses" mean for purposes of the Lifetime Learning Credit?
- A10: The term "qualified tuition and related expenses" for purposes of the Lifetime Learning Credit has the same meaning as it does for purposes of the Hope Scholarship Credit. (See Sec. 1, Q&A5.)
- Q11: If a student (who is not claimed as a dependent on anyone's Federal income tax return) pays qualified tuition and related expenses using a combination of a Pell Grant, a loan, a gift from a family member, and some personal savings, what expenses may be taken into account in calculating the Lifetime Learning Credit the student may claim?
- A11: The student may take into account only "out-of-pocket" expenses in calculating the Lifetime Learning Credit. Qualified tuition and related expenses paid with the student's earnings, a loan, a gift, an inheritance, or personal savings (including savings from a qualified state tuition program) are taken into account in calculating the credit amount. However, qualified tuition and related expenses paid with a Pell Grant or other tax-free scholarship, a tax-free distribution from an Education IRA, or tax-free employer-provided educational assistance are not taken into account in calculating the credit amount.
- Q12: How does a taxpayer claim the Lifetime Learning Credit?
- A12: The first year that the credit will be available is 1998. Taxpayers will not be able to claim the credit until they file their 1998 returns in 1999. Instructions accompanying the 1998 tax forms (for returns required to be filed in 1999) will explain how to calculate the credit and how to claim it on the tax return.
- Q13: Is there a limit on the number of years in which a Lifetime Learning Credit may be claimed, as there is for the Hope Scholarship Credit?
- A13: No. Unlike the Hope Scholarship Credit, there is no limit to the number of years in which a Lifetime Learning Credit may be claimed for each student. Thus, for example, an individual who enrolls in one college-level class every year would be able to claim the Lifetime Learning Credit for an unlimited number of years, provided the individual meets the income limits and is taking the classes at institutions that meet the eligibility requirements. (See Q&A3 in this section.)
- Q14: May a parent or student claim a Lifetime Learning Credit for tuition paid in advance of when the academic period begins?
- A14: Generally, the credit is available only for payments of qualified tuition and related expenses that cover an academic period beginning in the same calendar year as the year in which payment is made. (An academic period begins on the first day of classes, and does not include periods of orientation, counseling, or vacation.) An exception, however, allows a parent or student to claim a Lifetime Learning Credit for payments of qualified tuition and related expenses made during the calendar year to cover an academic period that begins in January, February, or March of the following taxable year. Because the Lifetime Learning Credit does not apply to expenses paid before July 1, 1998, this exception does not apply to tuition paid before that date to cover academic periods beginning before or after that date.
- Q15: May a student or a student's parents take the Lifetime Learning Credit for the student's expenses in a taxable year in which the student takes money out of an Education IRA on a tax-free basis?
- A15: No. If a student is receiving a tax-free distribution from an Education IRA in a particular taxable year, none of that student's expenses may be claimed as the basis for a Lifetime Learning Credit for that year. However, the student may waive the tax-free treatment of the Education IRA distribution and elect to pay any tax that would otherwise be owed on the Education IRA distributions so that the student or the student's parents may claim a Lifetime Learning Credit for expenses paid in the same year the Education IRA distributions are received.

### SECTION 3. EDUCATION IRAS

Beginning January 1, 1998, taxpayers may deposit up to \$500 per year into an Education IRA for a child under age 18. Parents, grandparents, other family members, friends, and a child him/herself may contribute to the child's Education IRA, provided that the total contributions for the child during the taxable year do not exceed the \$500 limit. Amounts deposited in the account grow tax-free until distrib-

uted, and the child will not owe tax on any withdrawal from the account if the child's qualified higher education expenses at an eligible educational institution for the year equal or exceed the amount of the withdrawal. If the child does not need the money for postsecondary education, the account balance can be rolled over to the Education IRA of certain family members who can use it for their higher education. Amounts withdrawn from an Education IRA that exceed the child's qualified higher education expenses in a taxable year are generally subject to income tax and to an additional tax of 10 percent. The Hope Scholarship Credit and Lifetime Learning Credit may not be claimed for a student's expenses in a taxable year in which the student takes a tax-free withdrawal from an Education IRA.

Q1: What is an Education IRA?

A1: An Education IRA is a trust or custodial account that is created or organized in the United States exclusively for the purpose of paying the qualified higher education expenses of the designated beneficiary of the account. The account must be designated as an Education IRA when it is created in order to be treated as an Education IRA for tax purposes.

Q2: For whom may an Education IRA be established?

A2: An Education IRA may be established for the benefit of any child under age 18. Contributions to the Education IRA will not be accepted after the designated beneficiary reaches his/her 18th birthday.

Q3: Where may an individual open an Education IRA?

A3: An individual may open an Education IRA with any bank, or other entity that has been approved to serve as a nonbank trustee or custodian of an individual retirement account (IRA), and the bank or entity is offering Education IRAs. Other entities that wish to offer Education IRAs but are not approved to serve as IRA trustees or custodians may seek approval by following the same IRS procedures used for approval of other IRA nonbank trustees. See Notice 97-57, 1997-43 I.R.B. 19 (October 27, 1997).

Q4: When may a taxpayer start contributing to an Education IRA for a child?

A4: A taxpayer may start making contributions on January 1, 1998, or at any time thereafter.

Q5: How much may be contributed to a child's Education IRA?

A5: Up to \$500 per year in aggregate contributions may be made for the benefit of any child. The contributions may be placed in a single Education IRA or in multiple Education IRAs.

Q6: What happens if more than \$500 is contributed to an Education IRA on behalf of a child in a calendar year?

A6: Aggregate contributions for the benefit of a particular child in excess of \$500 for a calendar year are treated as excess contributions. If the excess contributions (and any earnings attributable to them) are not withdrawn from the child's account (or accounts) before the tax return for the year is due, the excess contributions are subject to a 6 percent excise tax for each year the excess amount remains in the account.

Q7: May contributions other than cash be made to a child's Education IRA?

A7: No. Education IRAs are permitted to accept contributions made in cash only.

Q8: May contributors take a deduction for contributions made to an Education IRA?

A8: No.

Q9: Are there any restrictions on who can contribute to an Education IRA?

A9: Any individual may contribute up to \$500 to a child's Education IRA if the individual's modified adjusted gross income for the taxable year is no more than \$95,000 (\$150,000 for married taxpayers filing jointly). (See Sec. 1, Q&A6 for a description of modified adjusted gross income.) The \$500 maximum contribution per child is gradually reduced for individuals with modified adjusted gross income between \$95,000 and \$110,000 (between \$150,000 and \$160,000 for married taxpayers filing jointly). For example, an unmarried taxpayer with modified adjusted gross income of \$96,500 in a taxable year could make a maximum contribution per child of \$450 for that year. Taxpayers with modified adjusted gross income above \$110,000

(\$160,000 for married taxpayers filing jointly) cannot make contributions to anyone's Education IRA.

Q10: May a child contribute to his/her own Education IRA?

A10: Yes.

Q11: Does a taxpayer have to be related to the designated beneficiary in order to contribute to the designated beneficiary's Education IRA?

A11: No.

Q12: How many Education IRAs may a child have?

A12: There is no limit on the number of Education IRAs that may be established designating a particular child as beneficiary. However, in any given taxable year the total aggregate contributions to all the accounts designating a particular child as beneficiary may not exceed \$500.

Q13: May a designated beneficiary take a tax-free withdrawal from an Education IRA to pay qualified higher education expenses if the designated beneficiary is enrolled less than full-time at an eligible educational institution?

A13: Yes. Whether the designated beneficiary is enrolled full-time, half-time, or less than half-time, he/she may take a tax-free withdrawal to pay qualified higher education expenses.

Q14: What happens when a designated beneficiary withdraws assets from an Education IRA to pay for college?

A14: Generally, the withdrawal is tax-free to the designated beneficiary to the extent the amount of the withdrawal does not exceed the designated beneficiary's qualified higher education expenses.

Q15: What are "qualified higher education expenses"?

A15: "Qualified higher education expenses" mean expenses for tuition, fees, books, supplies, and equipment required for the enrollment or attendance of the designated beneficiary at an eligible educational institution. Qualified higher education expenses also include amounts contributed to a qualified state tuition program. Qualified higher education expenses also include room

and board (generally the school's posted room and board charge, or \$2,500 per year for students living off-campus and not at home) if the designated beneficiary is at least a half-time student at an eligible educational institution. The standards for determining whether a student is enrolled at least half-time are the same as those used for the Hope Scholarship Credit. (See Sec. 1, Q&A3.)

Q16: What is an eligible educational institution?

A16: An eligible educational institution is any college, university, vocational school, or other postsecondary educational institution that is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) and, therefore, eligible to participate in the student aid programs administered by the Department of Education. This category includes virtually all accredited public, nonprofit, and proprietary postsecondary institutions. (The same eligibility requirements for institutions apply for the Hope Scholarship Credit, the Lifetime Learning Credit, and early withdrawals from IRAs for qualified higher education expenses. (See Sec. 1, Q&A4, Sec. 2, Q&A3, and Sec. 4, Q&A2.))

Q17: What happens if a designated beneficiary withdraws an amount from an Education IRA but does not have any qualified higher education expenses to pay in the taxable year he/she makes the withdrawal?

A17: Generally, if a designated beneficiary withdraws an amount from an Education IRA and does not have any qualified higher education expenses during the taxable year, a portion of the distribution is taxable. The taxable portion is the portion that represents earnings that have accumulated tax-free in the account. The taxable portion of the distribution is also subject to a 10 percent additional tax unless an exception applies.

Q18: Is a distribution from an Education IRA taxable if the distribution is contributed to another Education IRA?

A18: Any amount distributed from an Education IRA and rolled over to another Education IRA for the benefit of the same designated beneficiary or certain members of the designated beneficiary's family is not taxable. An amount is rolled over if it is paid to another Education IRA on a date within 60 days after the date of the distribution. Members of the designated beneficiary's family include the designated beneficiary's children and their descendants, stepchildren and their descendants, siblings and their children, parents and grandparents, stepparents, and spouses of all the foregoing. The \$500 annual contribution limit to Education IRAs does not apply to these rollover contributions. For example, an older brother who has \$2,000 left in his Education IRA after he graduates from college can roll over the full \$2,000 balance to an Education IRA for his younger sister who is still in high school without paying any tax on the transfer.

Q19: What happens to the assets remaining in an Education IRA after the designated beneficiary finishes his/her postsecondary education?

A19: There are two options. The amount remaining in the account may be withdrawn for the designated beneficiary. The designated beneficiary will be subject to both income tax and the additional 10 percent tax on the portion of the amount withdrawn that represents earnings if the designated beneficiary does not have any qualified higher education expenses in the same taxable year he/she makes the withdrawal. Alternatively, if the amount in the designated beneficiary's Education IRA is withdrawn and rolled over (as described in Q&A18 of this section) to another Education IRA for the benefit of a member of the designated beneficiary's family, the amount rolled over will not be taxable.

Q20: Rather than rolling over money from one Education IRA to another, may the designated beneficiary of the account be changed from one child to another without triggering a tax?

A20: Yes, provided: (1) the terms of the particular trust or custodial account permit a change in designated beneficiaries (each trustee or custodian will control whether options like this one are available in the accounts they offer), and (2) the new designated beneficiary is a member of the previous designated beneficiary's family. (See Q&A18 in this section.)

Q21: May a student or the student's parents claim the Hope Scholarship Credit or Lifetime Learning Credit for the student's expenses in a taxable year in which the student receives money from an Education IRA on a tax-free basis?

A21: No. If a student is receiving a tax-free distribution from an Education IRA in a particular taxable year, none of that student's expenses may be claimed as the basis for a Hope Scholarship Credit or Lifetime Learning Credit for that year. However, the student may waive the tax-free treatment of the Education IRA distribution and elect to pay any tax that would otherwise be owed on an Education IRA distribution so that the student or the student's parents may claim a Hope Scholarship Credit or Lifetime Learning Credit for expenses paid in the same year the Education IRA distributions are received.

Q22: May contributions be made to both a qualified state tuition program and an Education IRA on behalf of the same designated beneficiary in the same taxable year?

A22: No. Any amount contributed to an Education IRA on behalf of a designated beneficiary during any taxable year in which an amount is also contributed to a qualified state tuition program on behalf of the same beneficiary will be treated as an excess contribution to the Education IRA. (See Q&A6 in this section for the treatment of excess contributions.)

#### SECTION 4. USING IRA WITHDRAWALS TO PAY HIGHER EDUCATION EXPENSES

Beginning January 1, 1998, a taxpayer may make withdrawals from an individ-



ual retirement account (IRA) to pay the qualified higher education expenses for the taxpayer, the taxpayer's spouse, or the child or grandchild of the taxpayer or taxpayer's spouse at an eligible educational institution. The taxpayer will owe federal income tax on the amount withdrawn, but will not be subject to the 10 percent early withdrawal tax that applies when amounts are withdrawn from an individual retirement account before the account holder reaches age 59½.

Q1: When can an individual first make a withdrawal from an IRA to pay for qualified higher education expenses without paying the 10 percent early withdrawal tax?

A1: On or after January 1, 1998, an individual can make withdrawals from his/her IRA to pay for qualified higher education expenses for academic periods beginning on or after January 1, 1998, without paying the 10 percent early withdrawal tax. See Notice 97-53, 1997-40 I.R.B. 6 (October 6, 1997). The 10 percent early withdrawal tax does not apply to a distribution from an IRA to the extent that the amount of the distribution does not exceed the qualified higher education expenses during the taxable year for the taxpayer, the taxpayer's spouse, and the child or grandchild of the taxpayer or the taxpayer's spouse at an eligible educational institution. For purposes of this rule, the term "qualified higher education expenses" means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of the student at an eligible educational institution. Qualified higher education expenses also include room and board if the student is enrolled at least half-time. Qualified higher education expenses paid with an individual's earnings, a loan, a gift, an inheritance given to the student or the individual making the withdrawal, or personal savings (including savings from a qualified state tuition program) are included in determining the amount of the IRA withdrawal which is not subject to the 10 percent early withdrawal tax. Qualified higher education expenses paid with a Pell Grant or other tax-free scholarship, a tax-free distribution from an Education IRA, or tax-free

employer-provided educational assistance are excluded.

Q2: What are the requirements for an "eligible educational institution"?

A2: An "eligible educational institution" is any college, university, vocational school, or other postsecondary educational institution that is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) and, therefore, eligible to participate in the student aid programs administered by the Department of Education. This category includes virtually all accredited public, nonprofit, and proprietary postsecondary institutions. (The same eligibility requirements for institutions apply for the Hope Scholarship Credit, the Lifetime Learning Credit, and Education IRAs. (See Sec. 1, Q&A4, Sec. 2, Q&A3, and Sec. 3, Q&A16.))

Q3: When are IRA withdrawals usually subject to the 10 percent early withdrawal tax?

A3: Generally, if a taxpayer makes a withdrawal from his/her IRA before reaching age 59½, the taxpayer must pay the 10 percent early withdrawal tax on all or part of the amount withdrawn.

Q4: In addition to the Education IRA, TRA '97 also created the Roth IRA. May a taxpayer make a withdrawal from a Roth IRA to pay for his/her child's qualified higher education expenses without paying the 10 percent early withdrawal tax?

A4: Yes. A taxpayer may make a withdrawal from a Roth IRA, as they can from other IRAs, to pay qualified higher education expenses without paying the 10 percent early withdrawal tax.

## SECTION 5. STUDENT LOAN INTEREST DEDUCTION

Beginning January 1, 1998, taxpayers who have taken loans to pay the cost of attending an eligible educational institution for themselves, their spouse, or their dependent generally may deduct interest they pay on these student loans. The maximum deduction each taxpayer is permitted to take increases from \$1,000 in 1998 to \$2,500 in 2001 and thereafter. The following table summarizes the yearly increases.

<i>Year</i>	<i>Maximum Deduction</i>
1998	\$1,000
1999	\$1,500
2000	\$2,000
2001 and thereafter	\$2,500

The deduction is available only for interest payments made during the first 60 months in which interest payments are required on the loan. The student loan interest deduction is available for interest payments due and made on or after January 1, 1998. Thus, the first time taxpayers will be able to claim the deduction is when they file their 1998 tax returns in 1999. No student loan interest deduction will be allowed for interest due or paid before 1998.

Q1: Are there any limits on what qualifies as a student loan?

A1: Yes. The loan must have been used to pay the costs of attendance at an eligible educational institution for a student enrolled at least half-time in a program leading to a degree, certificate, or other recognized educational credential. An eligible educational institution is any college, university, vocational school, or other postsecondary educational institution that is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) and, therefore, eligible to participate in the student aid programs administered by the Department of Education. This category includes virtually all accredited public, nonprofit, and proprietary postsecondary institutions. For purposes of the student loan interest deduction, eligible educational institutions also include institutions that conduct an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training.

Q2: Is a student loan interest deduction available if the student loan is not federally guaranteed or otherwise subsidized?

A2: Yes. As long as the loan was used to pay the costs of attendance at an eligible educational institution and the other eligibility requirements are met, the deduction is available for the interest on the loan. The deduc-



tion does not depend on whether the loan is federally guaranteed or subsidized.

Q3: What costs are included in the costs of attendance?

A3: Costs of attendance include all items that are included in costs of attendance for purposes of calculating a student's financial need in accordance with the Higher Education Act. Thus, they include tuition, fees, room, board, books, equipment, and other necessary expenses, such as transportation. Costs of attendance include more items than are included in qualified tuition and related expenses for purposes of the Hope Scholarship and Lifetime Learning Credits. (See Sec. 1, Q&A5 and Sec. 2, Q&A10.)

Q4: Is the deduction available for interest paid on loans used to pay for graduate school?

A4: Yes.

Q5: Are there any limits on who may take the student loan interest deduction?

A5: Yes, there are income restrictions. To claim the maximum deduction, a taxpayer must have modified adjusted gross income of \$40,000 or less (\$60,000 for married taxpayers filing jointly). The amount of the taxpayer's deduction is gradually reduced for taxpayers with modified adjusted gross income between \$40,000 and \$55,000 (between \$60,000 and \$75,000 for married taxpayers filing jointly). For example, for 1998, the maximum deduction a single taxpayer with modified adjusted gross income of \$47,500 could take would be \$500. Taxpayers with modified adjusted gross income above \$55,000 (\$75,000 for married taxpayers filing jointly) may not claim the student loan interest deduction. The modified adjusted gross income limitations are indexed for inflation after 2002.

Q6: May former students whose loans are already in repayment deduct the interest they pay on a student loan on or after January 1, 1998?

A6: Yes, but they may deduct only those payments made during the first 60 months that interest payments are required on a loan. If interest pay-

ments on a student loan were first required before January 1, 1998, the months in which those payments were required count against the 60-month time limit for that loan. The 60-month period may run out at different times for different loans.

Q7: May a parent claim the student loan interest deduction if the parent borrows to pay his/her child's costs of attending college?

A7: Yes. An individual may claim the student loan interest deduction if the individual borrows money to pay the costs of attending college for certain members of the individual's family or household (including his/her children) and incurs the debt in a year in which the individual supplies more than half of the student's support.

Q8: If an individual has paid more than \$1,000 in interest on student loans in 1998 and is otherwise eligible to take the maximum student loan interest deduction, how large a deduction may the individual claim?

A8: The individual's student loan interest deduction for 1998 is \$1,000, provided the individual's modified adjusted gross income falls below the point where the deduction is reduced or eliminated.

Q9: Does an individual have to itemize his/her income tax deductions to claim the student loan interest deduction?

A9: No. The student loan interest deduction is available regardless of whether an individual elects to take the standard deduction or to itemize deductions. Instructions accompanying the 1998 tax forms (for returns required to be filed in 1999) will explain how to compute and claim the deduction.

Q10: If a student is claimed as a dependent by his/her parent in a particular taxable year, may the student take the student loan interest deduction for student loan interest that he/she pays in that year?

A10: No. The student may not claim the student loan interest deduction in any taxable year in which he/she is claimed as a dependent on another taxpayer's Federal income tax return. However, if the student continues to pay interest on a student

loan and meets the other eligibility requirements, the student may claim the student loan interest deduction for payments made in a later year when the student is no longer a dependent on his/her parent's Federal income tax return.

Q11: Are there any tax benefits available if the student repays his/her loan by performing community service rather than making cash payments?

A11: There may be. Loan forgiveness provided in return for community service is tax-free when it is part of certain lending programs run by Federal, state, or local governments, educational institutions, or charitable organizations. Students should consult a tax advisor to determine whether they qualify.

## SECTION 6. QUALIFIED STATE TUITION PROGRAMS

Under current law, a qualified state tuition program (QSTP) means a program established and maintained by a state under which a person may: (1) prepay tuition benefits on behalf of a beneficiary so that the beneficiary is entitled to a waiver or a payment of qualified higher education expenses, or (2) contribute to an account that is established for paying qualified higher education expenses of the beneficiary. The tax on earnings attributable to prepayments or contributions is deferred until the earnings are distributed from the QSTP. The beneficiary pays tax on the earnings at the time of distribution. If amounts saved through a QSTP are used to pay for college, the student or the student's parents still may be eligible to claim either the Hope Scholarship Credit or the Lifetime Learning Credit.

Q1: How have the prior rules for QSTPs been changed by TRA '97?

A1: (1) QSTPs may now be used to save for room and board expenses, up to a specified level (generally the school's posted room and board charge, or \$2,500 per year for students living off-campus and not at home);

(2) QSTPs may now be used to pay expenses not only at public and non-profit institutions but also at proprietary schools (i.e., any school that is an eligible educational institution for purposes of the Hope Scholarship or

Lifetime Learning Credits, see Sec. 1, Q&A4);

(3) Accounts in QSTPs may now be transferred tax-free from the beneficiary to a broader range of family members. (Step-siblings and spouses of family members have been added.)

Q2: May a student using a QSTP to pay for college also benefit from the Hope Scholarship Credit or Lifetime Learning Credit?

A2: Yes. The student or the student's parent may claim a Hope Scholarship Credit or Lifetime Learning Credit for qualified tuition and related expenses covered by a qualified state tuition program, provided the other eligibility requirements for the credits are met.

Q3: When are the changes to the QSTP rules made by TRA '97 effective?

A3: Generally, the new rules go into effect on January 1, 1998. However, the new provision permitting QSTPs to be used to save for room and board expenses is effective back to August 20, 1996.

Q4: May contributions be made to both a qualified state tuition program and an Education IRA on behalf of the same designated beneficiary in the same taxable year?

A4: No. Any amount contributed to an Education IRA on behalf of a designated beneficiary during any taxable year in which an amount is also contributed to a qualified state tuition program on behalf of the same beneficiary will be treated as an excess contribution to the Education IRA. (See Sec. 3, Q&A6 for the treatment of excess contributions to an Education IRA.)

## SECTION 7. EXCLUSION FOR EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE

TRA '97 extends tax-free treatment to employer-provided educational assistance for undergraduate courses that begin before June 1, 2000. Employers may continue to provide up to \$5,250 per year in educational assistance to each employee on a tax-free basis for courses beginning before that date, regardless of whether the education is job-related. This benefit expires for assistance in paying for courses that begin on or after June 1, 2000.

Q1: How does an employee learn whether tax-free educational assistance is available to him/her?

A1: Employers have this information. Employers offering tax-free educational assistance are required to have a written plan describing the benefit and the terms under which it is available.

Q2: Does the employee have to do anything special to avoid being taxed on employer-provided educational assistance, up to the \$5,250 limit?

A2: No. The employer will automatically treat the educational assistance as a tax-free benefit and will not include it as wages on the employee's W-2 form.

Q3: May an employee receive tax-free educational assistance from the employer to attend graduate school?

A3: In general, no. However, employers can provide job-related educational assistance for graduate-level education as a tax-free fringe benefit under certain circumstances. Educational assistance would generally qualify as job-related if it maintains or improves skills required for the employee's current job or satisfies certain express employer-imposed conditions for continued employment. Individuals should consult a tax advisor for help in determining the tax treatment of any assistance the individual may be receiving from an employer for graduate-level education.

Q4: If a student is enrolled in undergraduate courses in a particular year and owes \$3,000 in qualified tuition and related expenses, and the student's employer pays all of the student's qualified tuition and related expenses, may a Hope Scholarship Credit or a Lifetime Learning Credit be claimed for that student for that year?

A4: No. Neither the Hope Scholarship Credit nor the Lifetime Learning Credit may be claimed for that student for that year.

FOR FURTHER INFORMATION CONTACT: Donna J. Welch, (202) 622-4910 regarding the Hope Scholarship and Lifetime Learning Credits; Monice L. Rosenbaum, (202) 622-6070 regarding em-

ployer-provided educational assistance and qualified state tuition programs; Pamela R. Kinard, (202) 622-6030 regarding Education IRAs and using IRA withdrawals to pay for higher education expenses; and John Moriarty, (202) 622-4950 regarding student loan interest deduction (not toll-free numbers).

The IRS will publish additional guidance on the provisions discussed in this notice as well as other provisions included in TRA '97. You may visit the IRS worldwide web site at (<http://www.irs.us/treas.gov/prod/hot/index.html>) to review this document or for information on additional guidance as it becomes available.

The Department of Education has a worldwide web site ([http://www.ed.gov/prog\\_info/SFA/StudentGuide](http://www.ed.gov/prog_info/SFA/StudentGuide)) you can visit and telephone numbers (1-800-4FED-AID and 1-800-USA-LEARN) you can call to get more information on affording college and obtaining student aid, such as Pell grants and student loans.

DRAFTING INFORMATION: The principal authors of this notice are Donna J. Welch, Office of Assistant Chief Counsel (Income Tax and Accounting) and Monice L. Rosenbaum and Pamela R. Kinard, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in its development.

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26 CFR 601.162: *Business Expenses.*  
(Also Part I, §§ 170; 1.162-15, 1.170A-1)

Rev. Proc. 97-52

## SECTION 1. PURPOSE

This revenue procedure provides guidance on the deductibility, under § 162 or 170 of the Internal Revenue Code, of unreimbursed travel and other out-of-pocket expenses incurred by a member of a federal advisory committee while performing services without compensation for the federal government as a member of that committee.

## SECTION 2. BACKGROUND

.01 Section 162(a) allows as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

.02 Section 162(b) provides that no deduction is allowed under § 162(a) for any contribution or gift that would be allowable as a deduction under § 170 were it not for the percentage limitations, the dollar limitations, or the requirements regarding the time of payment, set forth in § 170.

.03 Section 1.162-15 of the Income Tax Regulations provides, in part, that no deduction is allowable under § 162(a) for a contribution or gift by an individual or a corporation if any part thereof is deductible under § 170(a).

.04 Section 170(a)(1) allows as a deduction any charitable contribution (as defined in § 170(c)) payment of which is made within the taxable year.

.05 Section 170(c)(1) provides, in part, that the term “charitable contribution” means a contribution or gift to or for the use of the United States, but only if the contribution or gift is made for exclusively public purposes.

.06 Section 1.170A-1(c)(5) provides that transfers of property to an organization described in § 170(c) that bear a direct relationship to the taxpayer’s trade or business and that are made with a reasonable expectation of financial return commensurate with the amount of the transfer may constitute allowable deductions as trade or business expenses under § 162 rather than as charitable contributions under § 170.

.07 Section 1.170A-1(g) provides that no deduction is allowable under § 170 for the contribution of services. However, unreimbursed expenditures made incident to the rendition of services to an organization, contributions to which are deductible, may constitute a deductible contribution. For example, out-of-pocket transportation expenses necessarily incurred in performing donated services are deductible. Reasonable expenditures for meals and lodging necessarily incurred while away from home in the course of performing donated services also are deductible. For the purposes of this paragraph, the phrase “while away from home” generally has the same meaning as that phrase has for purposes of § 162 and the regulations thereunder.

.08 Section 1.170A-1(h)(1) provides that no part of a payment that a taxpayer makes to or for the use of an organization described in § 170(c) that is in considera-

tion of goods or services is a contribution or gift unless the taxpayer intends to and actually does pay an amount that exceeds the fair market value of the goods or services received. *See United States v. American Bar Endowment*, 477 U.S. 105 (1986).

.09 Federal advisory committees are governed by the Federal Advisory Committee Act, 5 U.S.C. app. §§ 1-15 (1994) (Act), and the regulations thereunder. A federal advisory committee is a “useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government.” Act § 2(a). Under the Act, a federal agency may accept the services without compensation of a federal advisory committee member. 41 C.F.R. § 101-6.1033(d) (1996). An advisory committee member may be reimbursed by the federal agency for travel expenses, including a per diem in lieu of lodging, meal, and incidental expenses. 41 C.F.R. § 1.101-6.1033(e) (1996).

### SECTION 3. LAW

Whether payments are ordinary and necessary business expenses under § 162, or are “contributions or gifts” within the meaning of § 170, depends on whether the payments bear a direct relationship to the taxpayer’s business and are made with a reasonable expectation of substantial benefit or financial return commensurate with the amount of the payment, or whether the payments are completely gratuitous. *See Rev. Rul. 72-314*, 1972-1 C.B. 44 (amounts paid by stock brokerage business to a charitable organization whose purpose is to reduce neighborhood tensions and combat community deterioration are deductible under § 162 because the payments are business related and could reasonably be expected to produce commensurate financial return for the business); *Rev. Rul. 72-293*, 1972-1 C.B. 95 (payments to the United States Transportation Exposition may be deducted under § 162 or 170 depending on the facts and circumstances); *Rev. Rul. 65-285*, 1965-2 C.B. 56 (out-of-pocket expenses of invitees to the National Conference on Law and Poverty are deductible under § 170 because invitees are rendering services without compensation to the United States); and *Singer Co. v. United States*, 449 F.2d 413 (Ct. Cl. 1971) (discounts on a taxpayer’s sales of sewing machines to

certain qualified donees, including churches, hospitals, and government agencies, were deductible (under prior law) as charitable contributions under § 170 because the taxpayer did not expect to receive substantial benefit from those discounts; discounts provided on similar sales to schools, however, were not deductible as charitable contributions under § 170 because the taxpayer expected to receive substantial benefit from those discounts in the form of increased future sales).

### SECTION 4. PROCEDURE

.01 The federal income tax deductibility of unreimbursed expenses of a federal advisory committee member under § 162 or 170 depends in part on whether the committee member reasonably expects to receive substantial benefit or commensurate financial return as a result of incurring the expenses. Determining expected benefit or financial return often can be difficult when the committee member is engaged in a trade or business related to the subjects discussed by a federal advisory committee while performing services without compensation for that committee.

.02 Therefore, if a taxpayer incurs an unreimbursed travel or other out-of-pocket expense while performing services without compensation as a member of a federal advisory committee, the Service will not challenge the taxpayer’s deduction of the expense as a charitable contribution under § 170, provided the taxpayer satisfies the requirements of that section other than those relating to the expectation of any benefit or financial return. If a taxpayer incurs an unreimbursed travel or other out-of-pocket expense while performing services without compensation as a member of a federal advisory committee and the expense is reasonably related to the taxpayer’s trade or business, the Service will not challenge the taxpayer’s deduction of the expense as an ordinary and necessary business expense under § 162, provided the taxpayer satisfies the requirements of that section other than those relating to the expectation of any benefit or financial return.

### SECTION 5. OTHER APPLICABLE LAW

Any deduction within the scope of this revenue procedure must conform to other

specific applicable requirements of law, such as the requirement to substantiate deducted expenses. *See* §§ 170(f)(8), 1.170A-13, 274(d), and 1.274-5T. Also, limits on the deductibility of expenses incurred for lobbying purposes may apply in certain situations. *See* §§ 162(e),

1.162-20, 1.162-28, 1.162-29, 170(f)(6), 1.170A-1(j)(11), 170(f)(9), and 1.170A-1(j)(6).

#### DRAFTING INFORMATION

The principal author of this revenue procedure is Catherine A. Prohofsky of

the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Ms. Prohofsky at 202-622-4930 (not a toll-free call).

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## Part IV. Items of General Interest

### Foundations Status of Certain Organizations

#### Announcement 97-112

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

*Former Public Charities.* The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

Aaron E. Brister Memorial Fund, Pollok, TX  
AASPIN Foundation Inc., Madison, WI  
Abate of Indiana Inc., Granger, IN  
Abernant Youth Football Inc., McCalla, AL  
A Better Way Counseling and Diagnostic Agency, Inc., Fort Wayne, IN  
Ability Associates Inc., Evergreen, CO  
Absolutely Nutritious Inc., Destrehan, LA  
ABTK Inc., Fennimore, WI  
Abundant Life Renewal Center Inc., Littleton, CO  
Academic Marshall Plan, College Station, TX  
Academy of Interdisciplinary Dentofacial Therapy, Inc., Springdale, AR  
Academy of LDS Dentists Inc., Ogden, UT  
Accept Pregnancy Centers Inc., Longwood, FL  
Achievement Club and Preschool Inc.—Achievement Club Daycare, Springfield, UT  
A CHILD Inc., Baton Rouge, LA  
A Childs Reach, Salt Lake City, UT  
A Desired Chance Inc., Dallas, TX  
A Georgetown Healthcare Foundation Inc., Georgetown, TX  
A Hand Up Inc., Lakewood, CO  
A Helping Hand Center Inc., Harrisburg,

PA  
AIDS-Aspen Cares, Aspen, CO  
A Labor of Love Inc.-A.L.L., Wichita, KS  
American Research Laboratory of Forensic Science, Arlington Hgts, IL  
A Mission in Excellence for Students of the Future, Chapel Hill, NC  
A Small World Academy Inc., Decatur, GA  
A Woman's Place, Lincoln, NE  
Boston Junior Eagles, Inc., West Roxbury, MA  
Brackthorn Foundation, Chicago, IL  
Breukelein Institute, Brooklyn, NY  
Bridge Street Child Development Center, Brooklyn, NY  
C4C: Kaleidoscope, Inc., San Antonio, TX  
Center for Executive Methods, Inc., Baltimore, MD  
Eastern Nursing Research Society, Durham, NH  
Family Enrichment Center, Inc., Indianapolis, IN  
Friends of the FDR Library, Hyde Park, NY  
Global Balance Incorporated, Dallas, TX  
GNYHA Housing, Inc., New York, NY  
Grandma's Hands, Charlotte, NC  
Jesucristo Reina Evangelistic Association, Inc., Staten Island, NY  
Leicester Soccer Club, Inc., Rochbale, MA  
Lifeforce A Way Out, Columbia, SC  
Media Echos, Inc., Flushing, NY  
Momma on the Move, Washington, DC  
Multi-Cultural English, Inc., New York, NY  
National Association of People With Disabilities, Inc., Rochester, NY  
National Coalition for Child Protection Reform, Cambridge, MA  
Near East Side Substance Abuse Council, Inc., Buffalo, NY  
Neighborhood Kids of Harlem, New York, NY  
New Questions, Inc., Westville, CT  
New York Chapter of Core, Inc., New York, NY  
Overseas Chinese Poetry and Painting Research Center, Inc., New York, NY  
Oxford Playground Committee, Inc., Oxford, MA  
Partners in Action for Sustainable Peace, Inc., Somerville, MA  
People Helping People With Christ, Inc., Wareham, MA

Police Chiefs Foundation of Rockland County, Inc., New City, NY  
Porter Foundation, Inc., Brooklyn, NY  
Public Land Preservation Society, Inc., Wilmington, DE  
Rainbow Renewal, Lansing, MI  
Rainbows of Hope, Inc., Staten Island, NY  
Sanford Project Literacy U.S. Task Force, Sanford, ME  
Saugatuck Rowing Association, Westport, CT  
Self-Help for Hard of Hearing People Greater Boston Chapter, Inc., Brookline, MA  
Shelburne Falls Trolley Museum, Inc., Shelburne Falls, NY  
Shiny International, New York, NY  
Shorefront YM-YWHA Nursing School of Brighton-Manhattan Beach, Brooklyn, NY  
Stamford Cares, Inc., Stamford, CT  
State Technologies, Inc., Albany, NY  
Stillhouse Trestle Corporation, Danville, VA  
Studio Upstairs Theatre Repertory, Inc., Goshen, NY  
Suburban Children, Inc., Bay Shore, NY  
Sunrise Crisis Pregnancy Center, Inc., Wareham, MA  
Support Our Schools Fund, Inc., New York, NY  
United Tenant Assoc-Mutual Housing Development Fund Corporation, Inc., New York, NY  
Upstate New York Health Care Resources, Inc., East Syracuse, NY  
U.S. Russian Economic Development Initiative, Ltd., New York, NY  
Vermont Environmental Story Telling Program, Burlington, VT  
Vision of Hope, Inc., Bronx, NY  
Wakefield 350, Inc., Wakefield, MA  
Westchester-Mid-Hudson Chapter the American Institute of Architects Scholarship Fund, Yorktown Heights, NY  
Weston Land Trust, Weston, MA  
The West Village Quartet, Inc., Bronx, NY  
Westwind Ministries, St. John, WA  
Whittier Rehabilitation Hospital Volunteer Association, Inc., Haverhill, MA  
Wildomar Elsinore Little League, Wildomar, CA

Wish is Granted, Inc., Smithtown, NY  
World Trust, Inc., Oakland, CA  
W. Seavey Joyce S.J. Award, Hull, MA  
Yonkers Consortium for Comprehensive  
Youth Services, Inc., Yonkers, NY

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)-7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

Form 3520, Annual Return to Report Transaction With Foreign Trusts and Receipt of Certain Foreign Gifts

Announcement 97-113

Notice 97-34, 1997-25 I.R.B. 22, provided guidance regarding the new foreign trust and large foreign gift reporting provisions contained in the Small Business Job Protection Act of 1996 (the "Act"). The Notice stated that the Service would

issue a revised Form 3520. The revised form allows U. S. persons to use a single form to comply with all of the new reporting requirements of the Act pertaining to transactions with foreign trusts and the receipt of foreign gifts after August 20, 1996.

The 1996 Form 3520, which reflects the guidelines of Notice 97-34, is now available to be download from the IRS home page at [www.irs.ustreas.gov](http://www.irs.ustreas.gov). U.S. persons should use this form to satisfy their reporting requirements for transactions occurring after August 20, 1996 for the tax year that includes August 20, 1996. In addition, U.S. persons treated as owning a portion of a foreign trust at any time during 1996 should use this form to satisfy their reporting obligations.

Form 8023 to replace Form 8023-A

Announcement 97-114

New Form 8023, Election Under Section 338 for Corporations Making Qualified Stock Purchases, will replace Form 8023-A, Corporate Qualified Stock Purchases. Corporations that want to make an election under section 338 can now download the form from the Internet or the Internal Revenue Information Services, using a computer and modem. Beginning in early November 1997, you can order Form 8023 by telephone, at the number shown below.

Request by—	Number or Address
Telephone	800-TAX-FORM (800-829-3676)
Computer and modem	703-321-8020 (modem settings are N, 8, 1)
Internet: World Wide Web FTP Telnet	<a href="http://www.irs.ustreas.gov">www.irs.ustreas.gov</a> <a href="ftp://ftp.irs.ustreas.gov">ftp.irs.ustreas.gov</a> <a href="telnet://iris.irs.ustreas.gov">iris.irs.ustreas.gov</a>

## Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it ap-

plies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

## Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C.—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.

E.O.—Executive Order.  
ER—Employer.  
ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contribution Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
F.R.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign Corporation.  
G.C.M.—Chief Counsel's Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.

PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.  
PRS—Partnership.  
PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statements of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.



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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 1997–1 through 1997–26 will be found in Internal Revenue Bulletin 1997–27, dated July 7, 1997.

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#### **96–42**

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#### **89–42**

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#### **93–76**

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<sup>1</sup> A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1997–1 through 1997–26 will be found in Internal Revenue Bulletin 1997–27, dated July 7, 1997.

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